

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Charles P. Kocoras	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 C 9464	DATE	8/10/2004
CASE TITLE	James Gibson vs. Stephen D. Mote et al		

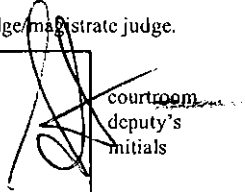
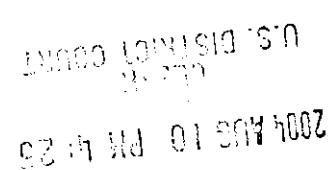

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] ENTER MEMORANDUM OPINION: Gibson's application (Doc 33-1) for a certificate of appealability is denied.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	 SCT	 Date/time received in central Clerk's Office	number of notices	Document Number <div style="font-size: 2em; font-family: cursive;">35</div>
			AUG 11 2004 date docketed	
			 docketing deputy initials	
			date mailed notice	
			mailing deputy initials	

cc 7th District Clerk Appeals

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JAMES GIBSON,

Plaintiff,

vs.

STEPHEN D. MOTE and ATTORNEY
GENERAL OF THE STATE OF ILLINOIS,
Lisa Madigan,

Defendants.

03 C 9464

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MEMORANDUM OPINION

CHARLES P. KOCORAS, Chief District Judge:

This matter comes before the court on James Gibson's ("Gibson") application for a certificate of appealability pursuant to 28 U.S.C. § 2253(c). For the reasons set forth below, the application is denied.

BACKGROUND

James Gibson is currently incarcerated at the Pontiac Correctional Center in Pontiac, Illinois, as a result of his 1991 conviction for first degree murder. On May 18, 2004, we denied Gibson's petition for a writ of habeas corpus which alleged ineffective assistance of counsel and prosecutorial misconduct. On July 6, 2004, we denied Gibson's motion asking us to reconsider certain holdings from our denial of his

petition. Gibson now wishes to appeal our decisions, but appellate proceedings cannot commence without a certificate of appealability either from this court or from a circuit judge of the Court of Appeals. 28 U.S.C. § 2253(c); Fed. R. App. Proc. 22(b).

DISCUSSION


A court may issue a certificate of appealability for a decision denying a 28 U.S.C. § 2254 petition for writ of habeas corpus “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). In order to make this showing, the applicant must demonstrate “that reasonable jurists could debate whether the challenges in his habeas petition should have been resolved differently or that his petition adequately shows a sufficient chance of the denial of a constitutional right that he deserves encouragement to proceed further.” Rutledge v. U.S., 230 F.3d 1041, 1047 (7th Cir. 2000).

Gibson’s present application does not persuade us that other jurists would resolve his ineffective assistance of counsel claims differently. Instead he merely rehashes the same arguments contained in his habeas petition and subsequent motion for reconsideration. The same can be said of his claims concerning prosecutorial misconduct. Nor do we find that Gibson’s application alleges constitutional deprivations beyond the ones that we firmly rejected in our previous opinions. We

accordingly find that his present application does not merit certification to the appellate court under the Rutledge standard.

CONCLUSION

For the reasons set forth above, Gibson's application for a certificate of appealability is denied.



Charles P. Kocoras
Chief Judge
United States District Court

Dated: AUG 10 2004